

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

**ARROW COMMUNICATION LABORATORIES, INC.,
and TRESNESS IRREVOCABLE PATENT TRUST,**

**Plaintiffs and Counterclaim
Defendants,**

v.

**5:05-CV-1456 (Lead Case)
5:05-CV-703 (Member Case)**

z JOHN MEZZALINGUA ASSOCIATES, INC.,

**Defendant and Counterclaim
Plaintiff.**

APPEARANCES:

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Hon. Norman A. Mordue, Chief U.S. District Judge

MEMORANDUM-DECISION AND ORDER

In this patent dispute, defendant/counterclaim-plaintiff John Mezzalingua Associates, Inc.,
doing business as PPC ("PPC"), appeals (Dkt. No. 155) from an order (Dkt. No. 151) of United

States Magistrate Judge David E. Peebles. The order granted in part and denied in part a discovery request (Dkt. No. 141) by plaintiffs/counterclaim-defendants Arrow Communication Laboratories, Inc. and Tresness Irrevocable Patent Trust (collectively, “Arcom”). Magistrate Judge Peebles directed PPC to produce “all license agreements entered into by it with third parties under patents held by PPC related to coaxial connectors[,]” subject to the existing confidentiality order. He denied without prejudice the remainder of Arcom’s discovery request.

In its appeal, PPC raises both procedural and substantive objections. With respect to the procedural matters, the Court agrees with Arcom that PPC’s objections “elevate form over substance.” Under the circumstances, Magistrate Judge Peebles’ handling of Arcom’s request was fair and appropriate and afforded PPC ample opportunity to be heard. PPC’s arguments do not demonstrate that the procedure utilized by Magistrate Judge Peebles was an abuse of discretion or was “clearly erroneous or contrary to law.” *See* 28 U.S.C. § 636(b)(1)(A); Fed.R.Civ.P. 72(a).

Turning to PPC’s substantive objections, the Court notes that a magistrate judge’s resolution of discovery disputes is entitled to substantial deference. *See Surles v. Air France*, 210 F.Supp.2d 501, 502 (S.D.N.Y. 2002). This is particularly so where, as here, the magistrate judge has been involved in numerous aspects of a lengthy and complex discovery process. The 44-page transcript of the March 15, 2007 telephonic hearing held by Magistrate Judge Peebles on this application establishes that he fully explored the question of whether the coaxial cable connector licenses sought by Arcom are discoverable as relevant to the issue of a reasonable royalty. *See* 35 U.S.C. § 284; Fed. R. Civ. P. 26(b); *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F.Supp. 1116, 1120 (S.D.N.Y. 1970), *modified on other grounds*, 446 F.2d 295 (2d Cir. 1971).

His conclusion that they are discoverable is supported by the record, including the deposition testimony of Gregory Tresness, and reflects a proper application of the law. *See generally id.*; *Freeman v. Gerber Prods. Co.*, 450 F.Supp.2d 1248, 1262 (D.Kan. 2006); *Wallace Business Forms, Inc. v. Uarco Inc.*, 1988 WL 105381, *7-9 (N.D.Ill. 1988); *aff'd in relevant part sub nom. Wallace Computer Servs., Inc. v. Uarco Inc.*, 887 F.2d 1095 (Table), 1989 WL 106583, *1 (Fed.Cir. 1989).

The Court has considered the objections submitted by two non-party licensees of PPC's coaxial cable connector. Particularly in view of the confidentiality order herein, these objections do not alter this Court's determination to affirm Magistrate Judge Peebles' order.

It is therefore

ORDERED that the March 30, 2007 Order of United States Magistrate Judge David E. Peebles (Dkt. No. 151) is affirmed; and it is further

ORDERED that the appeal therefrom (Dkt. No. 155) is denied.

IT IS SO ORDERED.

May 23, 2007
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge